SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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# No. 255

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WALTER CHAPLINSKY,

*Appellant,*

*vs.*

STATE OF NEW HAMPSHIRE.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE.

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## STATEMENT AS TO JURISDICTION.

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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1941

## No. 255

WALTER CHAPLINSKY,

*Appellant,*

*vs.*

STATE OF NEW HAMPSHIRE,

*Appellee.*

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

## JURISDICTIONAL STATEMENT.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

## New Hampshire Statute Drawn in Question.

The statute, the constitutionality and validity of which as construed and applied to appellant is here drawn in question, is Chapter 378, section 2 (page 1470), Public Laws of the State of New Hampshire, which reads as follows:

> "No person shall address any offensive, derisive, or annoying word to any other person who is lawfully in the street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, annoy, or offend him or prevent him from pursuing his lawful business or occupation."

The New Hampshire Supreme Court and the courts below held that the statute was not unconstitutional and that it did not abridge appellant's freedom of speech and freedom of press, in violation of the Fourteenth Amendment to the Federal Constitution. Accordingly, that court sustained the statute's application to appellant's acts and decided in favor of validity of the statute and held it to be constitutional as applied to appellant.

## Timeliness.

The judgment of the New Hampshire Supreme Court was entered on March 4, 1941 (R. —). The opinion of that court was delivered on the same date and appears in the Record, p. — *et seq.* The judgment of the New Hampshire Supreme Court became final on March 4, 1941, the date of the opinion. The petition for appeal is duly filed and presented within ninety (90) days from such date to this Court and is therefore timely.

## Statement of Nature of Case.

The appellant, Walter Chaplinsky, on the afternoon of Saturday, April 6, 1940, was standing and walking back

and forth on the sidewalk of the corner of North Main Street at Central Square in the City of Rochester. He was selling and offering for sale Biblical literature entitled "Watchtower", "Consolation" and others, and announcing his pamphlets. Appellant is an ordained minister of Jehovah God and is one of Jehovah's Witnesses and possessing credentials attesting to such fact.

While appellant was engaged in this work he was assaulted by a man who was accompanied by a police official, in the presence of such official, and the police official refused to arrest the man upon appellant's request. A few minutes later appellant was set upon and beaten by a mob. Appellant testified that police officials joined in with the mob. The police denied this in their testimony. The police intervened and started to take the appellant, on foot, to the police station located in the City Hall about a block away. While on the way to the City Hall and while on Wakefield Street, a public street, the appellant testified that he was very excited as he had just received about seven to ten punches and that he was being roughly handled by the police; that he asked the City Marshal, "Why don't you arrest the ones who started this fight?" to which the Marshal replied, "Shut up, you damn bastard and come along." Thereupon appellant said, "You are a damn fascist and a racketeer." The appellant testified that about a minute later when they who were together arrived just outside the City Hall he recognized a man who had previously struck him. The appellant said to that man, "Who are you?" The man replied, "I am a Deputy Sheriff." The appellant then said, "If you are a Deputy Sheriff this city's officials of Rochester are fascists."

The police testifying for the State denied ever having struck the appellant or participating with the mob, or addressing the appellant with profane language, or handling him roughly, or doing anything which may have reasonably

provoked the appellant. All the prosecution witnesses testified that the appellant made the exact statements attributed to him in the complaint.

Defendant (appellant here) was originally prosecuted in the Municipal Court of the City of Rochester by warrant and complaint, which reads as follows:

> "County of Strafford, aforesaid, with force and arms, in a certain public place in said city of Rochester, to wit, on the public sidewalk on the easterly side of Wakefield Street, near unto the entrance of the City Hall, did unlawfully repeat, the words following, addressed to the complainant, that is to say, 'you are a God damned racketeer' and 'a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists' the same being offensive, derisive and annoying words and names."

He was convicted and duly appealed to the Superior Court. Thereafter his case was tried *de novo* in the Superior Court at Dover, New Hampshire, before a jury which resulted in a verdict of guilty. Thereafter the defendant was sentenced to six months in the State prison.

At the conclusion of the State's case and of the entire case, appellant filed a motion to dismiss the complaint and for his discharge, upon grounds therein stated (R. —). That motion was overruled by the court and exception allowed to appellant. As grounds for such motion the appellant contended that the statute as construed and applied to him was invalid and void because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that as so construed and applied it unlawfully deprives appellant of his rights of freedom of speech and freedom of press. As further ground appellant contended in the motion that the statute is void on its face because of vagueness, indefiniteness and the delegating of arbitrary discretion and discriminatory powers to the police. It was

further contended in the motion that the evidence failed to show appellant guilty.

Bill of exceptions covering all the points here urged was duly allowed by the trial judge, and the case was taken to the New Hampshire Supreme Court on such bill of exceptions (R. —). The case was timely appealed to that court and duly docketed; and was thereafter argued at the February Term, 1941.

In the above matter *substantial Federal questions* attacking the validity of the statute were raised in the trial court by motions to dismiss at various stages of the proceedings as set forth above, on the ground that as construed and applied to appellant, and on its face, the statute is invalid because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that it unreasonably deprives appellant of freedom of speech and freedom of press. And, further, that such statute vests in the police arbitrary and discriminatory powers, and is vague and indefinite; thereby denying due process and equal protection of the laws in violation of the Federal Constitution, Fourteenth Amendment, Section 1 (R. —).

These points of law were overruled by the trial court, although duly and timely urged (R. —).

These Federal questions were carried forward and urged in the assignments of error, which were presented to the New Hampshire Supreme Court in the time and manner required by law (R. —).

The New Hampshire Supreme Court passed upon each of said Federal questions or assignments, attacking the validity of the statute as applied to appellant, and held the statute valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. See Opinion, Appendix A.

The State Supreme Court sustained the conviction of appellant and affirmed the judgment of the trial court by overruling defendant's exceptions.

In the petition for appeal and the assignments of error filed with this statement, appellant complains of the judgment of the New Hampshire Supreme Court for and on account of each of the grounds set forth in his brief filed in said State court and which grounds are also set forth in the bill of exceptions duly approved by the trial court.

## Grounds and Decisions Showing Substantial Federal Questions.

Appellant's contentions herein are that the statute drawn in question, as applied to his activity, is void in that it

A) deprives him of his right of freedom of speech and freedom of press, and therefore is invalid on its face and as construed and applied because it is repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution;

B) is invalid and void on its face by reason of the fact that it is so vague, indefinite, uncertain and ambiguous that it fails to set a reasonable standard of guilt and is therefore violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States;

C) is invalid and void on its face by reason of the fact that it is an unreasonable exercise of the police power in that it allows and places no restrictions upon arbitrary discrimination and is thus violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

## Points for Argument.

1. The statute of the State of New Hampshire, to wit, Public Law, chapter 378, section 2. is invalid and void on

its face and as construed and applied, because it is repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution in that it unreasonably restricts freedom of speech and freedom of press, contrary to the Fourteenth Amendment.

2. The statute hereinbefore mentioned is invalid and void on its face by reason of the fact that it is so vague, indefinite, uncertain, and ambiguous that it fails to set a reasonable standard of guilt and is therefore violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

3. The statute hereinbefore mentioned is invalid and void on its face by reason of the fact that it is an unreasonable exercise of the police power in that it allows and places no restrictions upon arbitrary discrimination and is thus violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

4. The undisputed evidence showed that the defendant was not guilty of violation of the statute hereinbefore mentioned.

5. Evidence of circumstances of provocation, justification, or mitigation offered by the defendant is admissible in a trial for violation of the statute hereinbefore mentioned.

## Argument.

It is now fundamentally established that freedom of speech and freedom of press are rights protected against state invasion under the due process clause of the Fourteenth Amendment.

*De Jonge* v. *Oregon*, 299 U. S. 353, 364.

The undisputed evidence shows that appellant, immediately prior to his unlawful and unjustified arrest, and also

during the time that he was unlawfully assaulted, was engaged in the exercise of his right of freedom of worshiping Almighty God and freedom of press, in distributing the "Watchtower" and "Consolation" magazines. He had done no wrong and had not acted in an offensive way whatsoever. The mob had gathered about him, with the knowledge and consent of the police, had threatened to get and did get an American flag, placed it before him and commanded him arbitrarily to salute it, and upon his refusal he was assaulted and beaten.

He had every reason to expect police protection, but was given none. On the contrary, the police without any reason whatsoever jumped upon him and arrested him without excuse.

The facts made the basis of this particular charge occurred while the defendant was under arrest and in the custody of officers.

At the outset we should like to call the Court's attention that the words here employed are not personal abuse, such as are described in the case of *Cantwell* v. *Connecticut*, 310 U. S. 296, as follows:

> "Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but *examination discloses that, in practically all, the provocative language* which was held to amount to a breach of the peace *consisted of profane, indecent, or abusive remarks directed to the person of the hearer.* Resort to epithets or *personal abuse* is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument."

Wrongful Oppression openly practiced, as here, by citizens in the presence of and with the consent of public officers is Rightly subject to open and prompt Condemnation by the one against whom such wrongful acts are performed. Earnestly and in good faith this contention and the following argument appellant submits for unbiased consideration.

Appellant's use of the word "damned" is, in these circumstances, not a violation of the statute. Here the use of that word served only to emphasize, to arouse to a realization of the wrongfulness of the course then being pursued by those thus spoken to.

The question of whether or not the complaining witness was a *racketeer* is a matter of opinion which, under the evidence, was fitly and timely expressed. The evidence shows that the complaining witness, a public officer, openly permitted a mob to attack the defendant and when the defendant *rightly* attempted to defend himself the complaining witness arrested him, beat and abused him. Let the Court ponder!

The only reason the mob gathered against the defendant, and the only reason the defendant was arrested, was on account of the fact that he was one of Jehovah's witnesses distributing literature disliked by the complaining witness and mobsters. Let this be clearly and fittingly emphasized in the consideration of defendant's position in the circumstances. Let it be borne in mind that at the time of the wrongful assault upon him he was upon a public street, where he had a right to be, and where he was lawfully doing in a peaceful manner that which he had a right to do, namely, imparting his views to others In Their Interest, as he sincerely believed. There is no showing that his *personal* deportment was noisy, truculent, overbearing or offensive. Defendant's right to distribute literature is guaranteed by the Constitution.

On the other hand, there is evidence that the complaining witness conspired with the mobsters in violation of Sections 51 and 52, Title 18, United States Code, to deprive the defendant of this right. One thus acting, in the opinion of the defendant, could be properly termed a "racketeer". Jehovah God has condemned racketeers and hence the expression "God damned", if, as and when used in such circumstances, imports verity or constitutes a simple definition of fact. The right to use such definitive and descriptive language in a proper manner and time is guaranteed by the Constitution regardless of whether the one so described agreed or not.

This same argument applies to the words "damned fascist", and the words "the whole government of Rochester are fascists or agents of fascists". Use of the word "fascist" is not derisive, and does not accuse the complaining witness of being an Italian or a follower of Benito Mussolini. The word "fascist" is now an English word which in common parlance means one who employs methods and acts in a manner so as to deprive another of his constitutionally secured rights, by misapplying laws or otherwise conspiring to deprive another of such rights, contrary to the Federal Constitution and its fundamental principles of freedom.

The acts of the complaining witness and his mobster allies constituted "fascist" action.

The defendant had the right to criticize the complaining witness as a public official openly acting in a wrongful manner, and also to criticize the local municipal government by the use of any language that he desired to employ as long as he did not induce or ask others to use violence against the local municipal government to overthrow the same. It is admitted by all that he did not attempt to overthrow the government but was criticizing the local government and its agents, which he had a right to do.

It is to be noted that the statute prohibits the use of "offensive and annoying words" to another on the street or in a public place with intent to annoy or offend him, and such statute is not confined to slanderous and libelous statements but extends to prohibit one from speaking *the truth* in the presence of another. Webster defines the words of this statute as follows:

> *Derisive*—Expressing, serving for, or characterized by derision. Derision—to scornfully deride, act of deriding, contempt.
>
> *Annoying*—That annoys; molesting, vexatious.
>
> *Offensive*—Making attack; pertinent to, or characterized by, offense or attack, assailant; aggressive; hence, fitted for, or used in, attacking.
>
> Giving pain or unpleasant sensations; obnoxious; revolting; as an offensive smell; offensive sound.
>
> Giving offense, causing, or such as to cause, displeasure or resentment; insulting; as offensive words.
>
> Obs. *a* causing injury or damage; harmful, injurious.
>
> *b* of the nature of an offense, sin or transgression; offending or tending to offend; transgressive.
>
> *c* productive of spiritual stumbling.

This statute is attacked as being void on its face, for the reason that it is vague and indefinite and also because on its face it deprives every one of the right of freedom of speech, contrary to the Fourteenth Amendment.

There are two methods of testing constitutionality. One method is to apply the statute to the facts and then test for constitutionality as applied to those facts. The other method is to determine whether the statute is void on its face and therefore making any complaint issuing under it also void. The court should not consider the complaint or evidence as shown by the record in testing validity if the statute is void on its face.

> "Where regulations of the liberty of free discussions are concerned, there are special reasons for observing

> the rule that it is the statute, and not the accusation nor the evidence under it, which prescribes the limits of permissible conduct and warns against transgressions." *Thornhill* v. *Alabama*, 310 U. S. 88.

The statute is also void *as applied*. To apply it to the activities of the defendant-appellant and to convict him on the evidence is error and makes the statute as construed and applied to him unconstitutional and void under the "due process" clause of the Fourteenth Amendment to the United States Constitution because it abridges his rights of free speech and free press, contrary to the provisions of the Federal Constitution.

Attention of the Court is drawn here to the fact that it is a fundamental proposition that if a statute constitutional on its face is applied to deprive and interfere with constitutionally secured rights, such as the undisputed evidence shows the defendant-appellant was exercising at the time of his arrest, then such statute becomes invalid.

In support of this proposition we refer the Court to *Concordia Fire Insurance Co.* v. *Illinois*, 292 U. S. 535, 545, where Mr. Justice Van Devanter said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

What do the words mean when surrounded by the terminology of the statute?

When is one guilty under this statute by the use of such words?

The words are so broad that they include almost any word. The *manner* of saying "Hello" may fall in that category. The *manner* of criticism of any act of a government official, criticism of an actor's performance, criticism of almost anything, might be offensive, annoying, or de-

risive; at least to the person to whom the remark, name, noise, or exclamation is addressed. If the criticism is written and handed to another in the street the writer would be subject to prosecution under this statute. If one man on the street tells another that he doesn't like him, or tells a "New Dealer" that he doesn't think Roosevelt should have been re-elected for a third term, or tells a policeman that the police officials of the city are inefficient, he may be and could be prosecuted under this statute, and everyone admits that such is prohibited by the Constitution. Everything depends on how one says a thing and how the person to whom it is said takes it or interprets it, under this statute. Thus it becomes a dragnet enforceable at the whim of individuals.

The descriptive words of the statute are so broad that they would permit an enforcement of the statute to curb, suppress and censor honest criticism of government, religion, politics, social functions, or any other subject. *The statute covers equally lawful and unlawful words and conduct and makes no distinction.*

*It does not confine itself to immoral, indecent, obscene, or profane words.* THE FAILURE THUS TO DO MAKES IT UNCONSTITUTIONAL.

*It prevents free communication of thoughts, ideas, information, and opinion merely because they might offend, annoy, or deride another.*

The words "offensive, derisive, annoying", "deride, annoy, offend" and "prevent him from pursuing his lawful business or occupation" take on a very vague, indefinite and uncertain meaning as used in Public Law, chapter 378, section 2.

No man of ordinary intelligence can safely discern from this statute just what he can say, or what words he may use in addressing another in the street or other public place. Almost anything that is said can be taken to be de-

risive under this statute, depending upon the susceptibilities of the hearer. Strikers or pickets may use some word, express some opinion which they had a right to say and which, even though said innocently and with good intention, can be interpreted by some as having been said with intent to prevent a man from pursuing his lawful business or occupation. For example, a picket may say to a salesman entering the store or establishment being picketed, "Don't sell A. He is unfair to labor." For such remark the spokesman may be and can be prosecuted and convicted under this statute.

Public Law, chapter 378, section 2, is not aimed at any inherent danger in any and every word, exclamation, name or remark which may be addressed to another in a street or public place with intent to deride, offend, or annoy, or prevent him from pursuing his lawful business or occupation. Under the statute it is possible that a man may without intent to deride, offend, or annoy address profane language to another in the street. The individual to whom it is addressed may or may not take it in jest. Others in the vicinity may be offended to the extent that a breach of the peace may ensue. The statute is not specifically directed at any inherent, clear, present danger of destruction to life or property and when the interest that the statute seeks to protect is balanced against the interests of the individual and community in the rights of free speech, free press, and free worship it cannot be found to be warrantable.

*Thornhill* v. *Alabama, supra;*
*Cantwell* v. *Connecticut, supra;*
*Schneider* v. *State*, 308 U. S. 147;
*Lovell* v. *City of Griffin*, 303 U. S. 444;
*Hague* v. *C. I. O., et al.*, 307 U. S. 496.

See opinion of Holmes, J., in
*Schenck* v. *United States*, 249 U. S. 52;
*Abrams* v. *United States*, 250 U. S. 630.

As has been shown the terminology is so vague and indefinite that it is difficult to say just what is meant. It gives ample leeway for those who may be in control to so enforce a statute like this with such arbitrary and harsh discrimination that all free discussion can be curtailed by fear of prosecution. The threat inherent in such arbitrary measures is equally as evil as the threat of license or censorship.

The New Hampshire Supreme Court admits that the statute prohibits even truthful utterances, which shows that it has been construed to prohibit freedom of speech.

> "Since the statute makes no distinction between truthful and untruthful utterances, it was held that the justification was inadmissible. • • • Chaplinsky could no more defend unlawful speech on the ground of provocation than could one of the street-crowd have defended a charge of calling Chaplinsky names on the ground that the name-caller had been incensed by Chaplinsky's teachings."

It is to be noted from the above that the court holds that evidence of provocation and justification was inadmissible. We have made complaint against the action of the courts below in holding that provocation and justification for the use of the words in question were inadmissible. See Point 5 of "Points for Argument", page 9, *supra*, and its equivalent in appellant's "Statement of Points to Be Relied Upon".

A statute which makes one guilty of an offense even though the challenged utterance be clearly justifiable is in derogation of the right of speech. The New Hampshire Supreme Court says that speech is limited to words that would directly tend to cause violence. That court said:

> "• • • to the extent that no words were forbidden except such as have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed."

This rule is contrary to the American rule expressed in the case of *Dearborn Publishing Co.* v. *Fitzgerald*, 271 Fed. 479, where it was said:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and not forbid innocent persons to exercise their lawful and equal rights. * * * If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed. * * *"

In support of the contention that the statute is contrary to the Fourteenth Amendment because denying freedom of speech and personal liberty without due process of law, we refer to:

*22 Corpus Juris Secundum* 71;
*Detroit Creamery, et al.*, v. *Kinnan, et al.*, 264 Fed. 845;
*Smith* v. *Cahoun*, 283 U. S. 564;
*Connally* v. *General Constr. Co.*, 269 U. S. 391, 392;
*Dials* v. *Commonwealth*, 192 Ky. 440, 233 S. W. 888;

and *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233, where enforcement of a Federal statute was voided because of the fact that the statute was too vague, indefinite and indeterminate. It was a statute prohibiting excess profits on necessaries. The court cited the case of *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, and *Weeds, Inc.* v. *United States*, 255 U. S. 109; and from the *Cohen Grocery* case quoted as follows:

> "Observe that the section forbids no specific or definite act. It confines the subject matter of the investiga-

tion which it authorizes (by court and jury after the act) to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against."

See also *United States* v. *Brewer*, 139 U. S. 278; *Louisville & Nashville Ry. Co.* v. *Railroad Comm. of Tenn.*, 19 Fed. 679; *Louisville & Nashville Ry. Co.* v. *Commonwealth*, 99 Ky. 132, 35 S. W. 129.

The test is whether a statute defining an offense is void for uncertainty—whether the language may apply not only to a particular act about which there can be little or no difference of opinion, but equally to other acts about which there may be radical differences, thereby devolving upon the court the exercise of arbitrary power of discriminating between the several classes of acts. *Czarra* v. *Dist. of Columbia Med. Supervisors*, 25 App. (D. C.) 443.

The dividing line between what is lawful and what is unlawful cannot be left to conjecture. *United States* v. *Capital Traction Co.*, 34 App. (D. C.) 592.

This general principle was applied in *Ex parte Jackson*, 45 Ark. 158, 164, where the statute annulled made it a misdemeanor to "commit any act injurious to the public health or public morals, or to the perversion of public justice or the due administration of the laws".

The principle is clearly applicable here and the statute in question should be held void upon its face.

In *United States* v. *Ballard*, 12 Fed. Supp. 321, United States District Judge Hamilton, of the Western District of Kentucky, held unconstitutional the internal revenue law known as Section 275, Title 26 U. S. C. A., and made a very eloquent argument in our favor appearing at pages 324

through 326 of the opinion, a part of which is quoted as follows:

> "The crime must be created by the Act of Congress, alone, for the public are not required to look beyond the act in their endeavor to ascertain what is criminal, and the discretion of fixing what facts import criminality is exclusively that of the law makers as distinguished from the executive."

See also the case of *International Harvester Co.* v. *Commonwealth of Kentucky*, 234 U. S. 217, 221, in which Mr. Justice Holmes outlawed the anti-trust law of Kentucky, which made price-fixing *lawful*, unless for the purpose or with effect of fixing a price that was greater or less than the real value of the article.

In *Herndon* v. *Lowry*, 301 U. S. 242, the majority opinion by Mr. Justice Roberts states at p. 264, in reference to Georgia Penal Code, sec. 56 (Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection):

> "The statute sets no reasonable standard of guilt. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment."

In *Dirk De Jonge* v. *Oregon*, 299 U. S. 353, the statute in question (Any person who shall preside at or conduct or assist in conducting any assemblage of persons, of any organization, or any society, or any group which teaches or advocates the doctrine of criminal syndicalism or sabotage is guilty of a felony—Here the defendant spoke at a Communist meeting) was held to be so broad that it abridged the freedom of speech and of the press, and the right of peaceable assembly, and thus violated the due process clause of the Fourteenth Amendment.

In *Near* v. *Minnesota*, 283 U. S. 697, the Minnesota statute, Chap. 285, Session Laws of Minnesota 1925, provided:

> "Sec. 1. Any person who as an individual, or as a member or employee of a firm, or association or organization, or as an officer, director, member or employee of a corporation, shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away (a) an obscene, lewd and lascivious newspaper, magazine, or other periodical, or (b) a *malicious, scandalous* and defamatory newspaper, magazine or other periodical, is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined as provided in the act."

The complaint there charged the defendant with printing a malicious, scandalous and defamatory newspaper. There was no question that the columns referred to in the complaint were malicious, scandalous and defamatory. The defendant alleged that the statute was unconstitutional as it abridged the right of freedom of the press as guaranteed in the Fourteenth Amendment, and that therefore the complaint since it issued under an invalid statute was void. *The court held the statute to be invalid and void on its face,* as it abridged the right of freedom of the press.

In *Stromberg* v. *California*, 283 U. S. 359, the California Penal Code sec. 403a prohibited the display of the red flag "as a sign, symbol or emblem of opposition to organized government". The complaint charged that the defendant did wilfully, unlawfully and feloniously display a red flag and banner in a public place and in a meeting place as a sign, symbol and emblem of opposition to organized government and as an invitation and stimulus to anarchistic actions and as an aid to propaganda that is and was of a seditious character." The defendant there was found guilty. The court held the statute invalid under the Fourteenth Amendment of the Constitution of the United States because it was so vague and indefinite and ambiguous as

to permit punishment for fair use of opportunity to advocate change of government, and that as such it was repugnant to the guarantee of liberty.

In *Lanzetta* v. *New Jersey*, 306 U. S. 451, the statute in question was New Jersey Laws of 1934 chapter 155, sec. 4. (Any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in this or in any other State is declared to be a gangster provided, however, that nothing in this section contained shall in any wise be construed to include any participant or sympathizer in any labor dispute.) The court held that the words "gang," "gangster," "known to be a member," and "any person not engaged in any lawful occupation" were so indefinite and ambiguous as to their meaning and as to the interpretation to be given that the statute constituted a violation of the due process clause of the Fourteenth Amendment and consequently was invalid on its face.

In *Atlantic Ref. Co.* v. *Trumbull*, 43 F. (2d) 154, 1930 Conn., a statute prohibiting sale of lubricating oil not "equal to or better in quality" than certain government specifications held invalid for indefiniteness.

Public Law chapter 378 section 2 when compared with the cases cited certainly falls in the same classification. This statute in effect allows prosecution for the expression of opinion and criticism, on any matter of public concern as well as private. It affords opportunity for a complete and thorough dictatorial censorship which can be imposed at the will of the power in control. It constitutes a grave danger to democracy.

The "intent" limitation in Public Law chapter 378 section 2 does not cure its defectiveness. (See argument at pages 16 through 19, *supra*.) In *Herndon* v. *Lowry*, *supra*, the intent which had to be shown could only be judged by

the "dangerous tendency" of the words uttered. The court held that "dangerous tendency" and words of the statute attempting to set a reasonable standard of guilt were so vague and uncertain that a jury would be warranted in a guilty finding even though the defendant's act may not have any effect for ten, twenty or thirty years. "Dangerous tendency" was not limited. The statute was held invalid and void.

*Specification by an "intent" cannot cure vagueness and ambiguity.*

In *Herndon* v. *Lowry, supra,* the Georgia Penal Code section 56, provided: "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection." In invalidating that statute the Court (by Mr. Justice Roberts) said:

> "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterance of a defined character must find its justification in a reasonable apprehension of danger to organized government. *The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the constitution.*"

To permit this conviction to stand means the end of free speech and constitutional liberty in this country. Chaplinsky was engaged in a Christian work as an ordained minister of Jehovah God, peaceably and quietly standing on the street exhibiting literature to passersby. Because the message contained in the pamphlets and magazines was not suitable to the rabble element of Rochester, including members of the police department, a mob formed and gathered about him, threatening him with violence unless

he discontinued his work. He refused to discontinue, as well as refused to salute the flag, and was assaulted and beaten in the presence of the officers, who subsequently arrested him. Under all the facts and circumstances, Chaplinsky was justified in saying what he did say and such utterances were provoked by the police, one of whom participated in the mob.

## Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause and we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that *substantial Federal questions* were presented before the New Hampshire Supreme Court.

WHEREFORE the Supreme Court of the United States ought to note jurisdiction of this cause for final hearing in accordance with rules of this Court.

Respectfully submitted,

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*Attorneys for Appellant.*

## APPENDIX "A".

Strafford No. 3226.

STATE

*v.*

WALTER CHAPLINSKY.

COMPLAINT, for violation of P. L., *c.* 378, *s.* 2. Trial by jury. Verdict of guilty. The defendant seasonably moved to quash on the ground that the statute is void under Article 6, Clause 2, and the First Amendment and Fourteenth Amendment (Section 2) of the Constitution of the United States. A motion to dismiss upon the same grounds was also seasonably made. Both motions were denied, and the defendant duly excepted. At the close of all the evidence, these motions were renewed and denied, subject to exception. The defendant further moved that a verdict be directed in his favor, assigning the same grounds and asserting that (1) the evidence, taken in the light most unfavorable to the defendant, failed to justify a finding of guilt, and (2) the words charged were not such as to come within the prohibition of the statute. The defendant also excepted to the exclusion of certain remarks of his counsel in the opening statement and to certain evidence. The material facts appear in the opinion. Transferred by *Burque*, C. J. on the defendant's bill of exceptions.

*Frank R. Kenison*, Attorney-General, *Ernest R. D'Amours*, Assistant Attorney General, and *John F. Beamis*, County Solicitor (*Mr. Kenison* orally), for the State.

*Hayden Covington* (of New York), *Alfred A. Albert* (of Massachusetts) and *Frank E. Blackburn* (*Mr. Covington* orally), for the defendant.

PAGE, J. The statute involved is P. L., *c.* 378, *s.* 2, which reads thus: "No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or excla-

mation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation."

The complaint is that Chaplinsky, being in the street at Rochester, addressed to the City Marshal these words: "You are a God damned racketeer" and "a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists." These words were testified to by several of the State's witnesses. The defendant admitted the words with the exception of the qualifying "God."

The section of the statute involved has two provisions. The first relates to words and names applied by one directly to another in a public place. The second refers to noises or exclamations, possibly not directed to the person derided, but with the intent expressed. The two provisions are distinct. One may stand separately from the other. Assuming, without holding, that the second were unconstitutional, the first could stand if constitutional. *Woolf* v. *Fuller*, 87 N. H. 64, 69; *Rosenblum* v. *Griffin*, 89 N. H. 314, 320. Since the present case arises solely under the first provision, there is no need to consider either the construction or the constitutionality of the second. We shall not do so.

The provision now involved has twice been construed by this court. Nearly fifty years ago there was a conviction under it, in a case where the defendant, in the street, addressed to one also in the street the words "You are a God damned blackmailer." The defendant attempted to justify by proving the statement to be true. *a. Since the statute makes no distinction between truthful and untruthful utterances, it was held that the justification was inadmissible. b.* Construing the statute, this court said that its "purpose was to preserve the public peace. The direct tendency of such conduct, like that of [criminal] libel (4 Bl. Com. 150, 151), is to provoke the person against whom it is directed to acts of violence." *State* v. *Brown*, 68 N. H. 200. The decision seems to have assumed that the only intent required for conviction under the first part of the section was an intent to speak the words. In any event, that is the construction which we place upon the provision.

Again in 1900, the earlier construction was followed, and it was further held that the act applied where the words

were addressed by one to another in a public highway, even though no third person was present to hear the words. *State* v. *McConnell*, 70 N. H. 294. The complaining witness, a woman, was called a bitch, with other obscene words not thought necessary to be printed in the reported decision. 209 Briefs and Cases, 521.

It thus appears that long before the words for which Chaplinsky was convicted, the construction of the provision was made plain, *a. to the extent that no words were forbidden except such as have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed. b.* This is not a case where, in advance of a judicial interpretation, the defendant could not be bound to understand what was intended by the statute. See *Lanzetta* v. *New Jersey*, 306 U. S. 451, 456.

Another point may be mentioned at once. The defendant asserts that the trial court improperly excluded evidence of, and comment on, the supposed provocation of Chaplinsky growing out of his prior treatment by the crowd. We think the ruling was correct.

The "provocative matter" was this. Chaplinsky was lawfully engaged, on the streets of Rochester, in the distribution of the literature of the sect known as Jehovah's Witnesses. Some of those on the streets apparently resented his activities. They may have thought them provocative. At least they complained to the City Marshal, who says he told them that Chaplinsky was lawfully engaged and that he must be left alone. At the same time the Marshal says he informed Chaplinsky that the crowd was getting restless and that he would better go slow. Some hours later, the crowd got out of hand and treated Chaplinsky with some violence. He was then led towards the police station, though apparently more for his protection than for arrest, since his arrest was definitely fixed only after he uttered the words charged, when the Marshal met him on the way. It may be remarked that nobody concerned, taking Chaplinsky at his word, used proper restraint on this occasion, but that fact, if true, could not be a defence of his own conduct.

At the moment the defendant uttered the words for which he was convicted, he undoubtedly felt resentment because

he had been roughly handled by the crowd. His resentment might well enough have extended to the police if they had failed to take any step reasonably within their power to control the crowd, or if they had failed to prosecute anybody who they had reasonable ground to believe had assailed him. But those facts, if true, would not have justified the offensive manner in which he sought to bring the Marshal to what Chaplinsky may have regarded as a sense of his duty. It was not useful or proper comment for bringing truth to light. Its plain tendency was to further breach of order, and it was itself a breach of the peace.

The excluded evidence related solely to Chaplinsky's recital of what he conceived was his mission to "preach the true facts of the situation of the Bible to the people," of "the Christian's permission", and of certain acts of the crowd that seem to have happened outside of the knowledge of the police. As to any possible provocation he had suffered while in the presence of the police, his testimony appears to have been admitted, though immaterial to the issue of his guilt. The court, in any event, was correct in excluding as immaterial the issues (1) whether the police had been neglectful prior to his offense, (2) whether the defendant had been assaulted by the crowd, and (3) whether, the defendant, in consequence, had been provoked to use the words with which he was charged. The defendant's argument as to this exclusion comes to this—that if he was provoked, the truth of his appellation of the Marshal could be established. The truth would be no justification. *State* v. *Brown, supra.*

The rule thus established is not severe. *c. Chaplinsky could no more defend unlawful speech on the ground of provocation than could one of the street-crowd have defended a charge of calling Chaplinsky names on the ground that the name-caller had been incensed by Chaplinsky's teachings. d.* The defendant was held to the same duties as those who disagreed with him or with whom he disagreed. The rules of fair conduct in public speech in the street apply indiscriminately to all—whether the speaker be a preacher, an official or a mere by-stander.

The defendant was not entitled to a directed verdict unless the statute is unconstitutional.

Upon the question of constitutionality, the defendant asserts infringement of the fundamental liberties of speech, press and worship. Since he did not print his words or circulate them in printed form, and since the words have no perceptible connection with worship or with freedom of religious belief or practice, we shall confine ourselves to the subject of free speech, though cognate rights may have illustrative effect in the course of this discussion.

The right to speak freely, whether in a street or elsewhere, is of primary importance. That is a principle whose general validity nobody denies, and nobody ought ever to deny. But the right may be limited in appropriate situations. The question is whether the limitation imposed by our statute is constitutionally permissible.

The fundamental basis of the constitutional rule is the necessity for full and free discussion of all subjects which affect ways of life, including religious, social and governmental questions. This is "essential to the very existence and perpetuity of free government." Cooley, Constitutional Limitations, 7th *ed.*, 596.

"No one can doubt the importance, in a free government, of a right to canvass the acts of public men and the tendency of public measures, to censure boldly the conduct of rulers, and to scrutinize closely the policy and plans of government. This is the great security of a free government. If we would preserve it, public opinion must be enlightened; political vigilance must be inculcated; free, but not licentious discussion must be encouraged. But the exercise of a right is essentially different from an abuse of it. The one is no legitimate inference from the other. Common sense here promulgates the board doctrine, *sic utere tuc, ut non alienum laedas;* so exercise your own freedom as not to infringe the rights of others, or the public peace and safety." Story, Constitution of the United States, *s.* 1888.

"Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Thornhill* v. *Alabama*, 310 U. S. 88.

If a city officer is guilty of a wrong or a neglect, any person is free to comment, to the end that free government may

be preserved. Peaceful and truthful discussion of matters of public interest cannot be penalized merely because others than the speaker may be persuaded of the truth of the criticism. "Abridgement of the liberty of such discussion can be justified only when the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion." *Thornhill* v. *Alabama, supra.*

The only competition for acceptance in that market of opinion to be found in this record is this: the defendant admittedly called the Marshal a damned racketeer and Fascist, in exchange, as the defendant says, for the Marshal's calling him a damned bastard. Either appellation, applied directly to the other on the street, would clearly be a breach of the statute. Neither would rise above the level of name-calling. Neither party could expect the other to be persuaded by such language. Neither remark qualifies as peaceful and truthful discussion of matters of public interest. Each invited personal violence and disturbance of the peace, without any observable tendency to enable the bystanders to test the merits of the competitive ideas, if they were ideas. We can see no relationship of such utterances to that freedom of speech which is so acutely desirable if free institutions are to be preserved. Such face-to-face reviling is not remotely necessary in the debate of public questions. It is not argument. It has no persuasive power. Its only power is to inflame, to endanger that calm and useful consideration of public problems which is the protection of free government. Its tendency is to useless and dangerous disorder in which the object of free speech is lost to view.

That there are limitations to the right of even unabusive speech is well recognized. In time of war an argument against military service, at other times permissible, may be penalized because "the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." *Schenck* v. *United States*, 249 U. S. 47, 52. The evil in that case was the obstruction to recruiting. Nor need the restriction be

limited to evil intended, provided the evil be imminent. As Mr. Justice Holmes said, "It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned." *Abrams* v. *United States*, 250 U. S. 616, 628. In another dissenting opinion, by Mr. Justice Brandeis, in which Mr. Justice Holmes joined, it was again declared that the exercise of free speech may be restricted where speech would "produce, or is intended to produce, a clear and imminent danger of some substantive evil which the State may constitutionally seek to prevent." *Whitney* v. *California*, 274 U. S. 357, 373.

In the case last cited the majority declared (at page 371) that it was not open to question "that a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow by unlawful means." See also *Gitlow* v. *New York*, 268 U. S. 652, 666.

In maintaining the guaranty of free speech, the authority of the State to enact laws to promote health, safety, morals and the general welfare is "necessarily admitted." The limits of this reserved authority must be "determined with appropriate regard to the particular subject of its exercise." And "the power of the State stops short of interference with what are deemed to be certain indispensable requirements of the liberty assured. * * * Liberty of speech, and of the press, is also not an absolute right, and the State may punish its abuse." The statute must be tested by its operation and effect. And so an act is unconstitutional if it authorizes the suppression by injunction of the future publication of a newspaper found in the past to have printed scandalous matter, whether true or false. The fact that the peace may be disturbed by the continuance of the publication does not warrant complete suppression or censorship of a newspaper which criticizes public officials in terms likely to injure their reputation. *Near* v. *Minnesota*, 283 U. S. 697, 707, 708.

Upon similar grounds, a tax upon the advertisements in papers having a circulation of more than 20,000 a week is un-

constitutional as a previous restraint. *Grosjean* v. *American Press Company*, 297 U. S. 233. The statutes in these two newspaper cases did not punish abuses; they entirely suppressed, or tended to suppress, the right of press. Nobody can claim that the statute under which Chaplinsky was convicted does more than punish the abuse of free speech. It does not suppress the right of speech, even in particular places. It is not an indispensable requirement of right that one criticizing a person should be permitted to address him directly in a public place with offensive, derisive or annoying words likely to precipitate a breach of the peace. Charges of official wrong or neglect may be expressed by way of argument to the public in the streets with no more than minor danger of disturbance, and that is enough to meet the requirements.

"These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. The rights themselves must not be curtailed." Only so can desirable changes be made by peaceful means, which is the purpose of the right of free speech. *DeJonge v. Oregon*, 299 U. S. 353, 364, 365. "The limitation upon individual liberty must have appropriate relation to the safety of the state." *Herndon* v. *Lowry*, 301 U. S. 242, 258.

Consequently an act prohibiting the distribution of literature in the streets without regard to involvement in disorderly conduct is too sweeping to be valid. *Lovell* v. *Griffin*, 303 U. S. 444, 451. It strikes at the "very foundation of the freedom of the press by subjecting it to license and censorship." Our statute aims merely to punish the abuse of right (in this case disorderly conduct) and subjects the speaker to no restraint of indispensable right.

Legislation aimed at conduct which impedes free use of the streets may be sustained provided it does not abridge the liberty of one rightfully in the streets to impart information without interfering with such use. "Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider* v. *State*, 307 U. S. 147, 161. Our stat-

ute prohibits conduct which has no necessary relationship to those freedoms.

The right of speech, therefore, "is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." The statute making the limitation must meet the test named. And so, if the statute provides for no speech without a permit, and the issuance of the permit depends upon the mere opinion of the licensing official that his refusal will prevent disorder, there is a suppression of the right. *Hague* v. *C. I. O.*, 307 U. S. 496. But prohibition by legislative act of abusive speech under circumstances which the legislature may appropriately believe dangerous to public order, and the punishment of speech unnecessary to the full exercise of the right, is believed to be no restraint, or at most a permissible restraint.

The power and the duty of the State to preserve the peace seems not to be doubted. If, as in *Thornhill* v. *Alabama*, 310 U. S. 88, no clear and present danger of a breach of the peace is inherent in the activity of every person who approaches premises "on strike" for the purpose of publicizing the facts of the labor dispute, and a statute prohibiting picketing for the purpose of such publicizing is invalid because not addressed to abuses, the statute now under consideration is not of that sort. It aims at abuses. It evidences some care in balancing community order with the right of free discussion of matters of public concern.

Nor is our statute of the sort declared unconstitutional in *Cantwell* v. *Connecticut*, 310 U. S. 296. There the asserted offense was the soliciting of funds for religious purposes (by the sale of literature) without a permit. With the consent of two Roman Catholics in the street, the defendant played a phonograph record which turned out to be a criticism of the hearers' religion. The hearers were incensed. A breach of the peace might have occurred unless the defendant had withdrawn at request. "There was no evidence that he [the defendant] was personally offensive or entered into any argument with those he interviewed." The State court held that the charge was "not

assault or breach of the peace or threats on Cantwell's part, but invoking or inciting others to break the peace, and that the facts supported the conviction of that offense." It resulted that the case involved the right to express opinion without the informant doing a single act of violence, without committing a breach of the peace, without either threat or offensive remark.

Mr. Justice Roberts pointed out that freedom to believe and freedom to act are both secured by the due process clause of the Fourteenth Amendment. "The first is absolute, but in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." While the State may not wholly deny the right to disseminate views which may inviolably be held, it may by general and non-discriminatory legislation regulate the times and places and the manner of conduct of the disseminator upon the streets, "and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment." The test suggested was whether the alleged protection of the State's interest has been pressed "to a point where it has come into fatal collision with the overriding interest protected by the Federal compact." So tested, the Connecticut statute, which left to the licensing officer the decision whether a cause was religious or not, was declared unconstitutional as involving previous restraint by way of censorship and not directed at the conduct of the disseminator of opinions.

In the course of discussion, Mr. Justice Roberts remarked upon permissible restraints of conduct. "The offense known as breach of the peace embraces • • • not only violent acts but acts and words likely to produce violence in others. • • • When • • • immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious." Such a breach of the peace by Cantwell, the State court had held, did not exist. "One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examina-

tion discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not, in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument [the Federal Constitution]."

In our opinion the statute under which Chaplinsky was convicted of a breach of the peace is not rendered invalid by the fact that it placed his conduct under such restraint as it did, and provided a penalty for it. *Milk Wagon Drivers Union* v. *Dairies*, United States Supreme Court, Oct. Term, 1940, No. 1.

The defendant further says that our statute is invalid because it is so vague and indefinite that one coming within its purview may not know what is prohibited. In this connection, the claim is made that the test of what is offensive is purely subjective in the sense that it is to be determined by the way the addressee reacts to it. The defendant therefore argues that nobody can know what is offensive language, since one man may be offended by words to which another man would take no exception. We have never construed the statute by any such test. The word "offensive" is not to be defined in terms of what a particular addressee thinks. The legislature had no such vague, shifting test in mind. As was long ago said, they had in mind the tendency of words, not their actual result. The analogy was that of the distinction between civil and criminal libel. *State* v. *Brown*, 68 N. H. 200.

The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight. We have never applied the statute otherwise. The English language has a number of words and expressions which by general consent are "fighting words" when said without a disarming smile. In common understanding they are offensive in the Websterian sense of being such as to cause resentment, or, as Funk and Wagnalls say perhaps more aptly, adapted to give offense, offense being that which causes anger. Such words, as ordinary men know, are likely to cause a fight. So are threatening, profane or obscene

revilings. Derisive and annoying words can be taken as coming within the purview of the statute as heretofore interpreted only when they have this characteristic of plainly tending to excite the addressee to a breach of the peace. If the time may ever come when the words "damned Fascist" will cease to be generally regarded as "fighting words" when applied face-to-face to an average American, this is not the time. The presiding justice might have been warranted in telling the jury that they were offensive as a matter of law. But since he thought the jury as competent as he to understand the words, he left the question to them.

The statute, as construed, does no more than prohibit the face-to-face words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitute a breach of the peace by the speaker—including "classical fighting words", words in current use less "classical" but equally likely to cause violence, and other disorderly words, including profanity, obscenity and threats. Men of common intelligence, situated as was Chaplinsky, do not need to guess at its meaning or differ as to its application. See *Connally* v. *Company*, 269 U. S. 385, 391. If the defendant or others might have guessed that less than such words were prohibited, or if they might have differed about what other words, if any, came under the ban, it was open to all to know, as we have heretofore held, that it could not apply except to words likely to cause a breach of the peace when addressed to an individual in a public place. Within the ambit of the statute, one does not need to guess at what is prohibited, for all men of common intelligence know almost instinctively what are the dangerous words when so addressed.

The holding of this statute as sufficiently definite is believed to be consistent with the decisions in *Stromberg* v. *California*, 283 U. S. 359, 369 (where the construction given included in the prohibition a fair use of constitutional freedom), in *Herndon* v. *Lowry*, 301 U. S. 242 (where defendants were obliged to exercise the gift of prophecy in order to know the application of the statute), in *Lanzetta* v. *New Jersey*, 306 U. S. 451 (where the defendant did not have the benefit of a permissible construction prior to the act with which he was charged), and in *Thornhill* v. *Alabama*, 310

U. S. 88 (where the prohibition extended to the use of words "without annoyance or threat of any kind").

The words "offensive", "derisive" and "annoying", in this connotation of tendency to disorder in public places, are commonly used and commonly understood. They are not wanting in meaning. Some are used in statements of legal principles by those who are careful of accuracy and definiteness of statement. Thus, "personally offensive" language, "profane, indecent or abusive remarks directed to the person of the hearer", and "epithets or personal abuse", all of which are caught up in the phrase "words likely to produce violence in others." *Cantwell* v. *Connecticut, supra.* Though general in a sense, such words have commonly accepted popular and legal significance. When one speaks of publicizing "without annoyance or threat of any kind" (*Thornhill* v. *Alabama, supra*) he is not to be misunderstood, even though "without just or legal excuse" are words without ascertainable meaning. And so reference to an injunction prohibiting officials from interfering with the right of speakers "in an orderly and peaceable manner" is definite, because everybody understands what "orderly and peaceable" means. *Hague* v. *C. I. O.*, 307 U. S. 496, 517. Likewise, any intelligent person may understand the prohibition of our statute as it has always been construed. Equally clear is the phrase "matter obscene or offensive to public morals", or the phrase "disorderly conduct" (*Lovell* v. *Griffin*, 303 U. S. 444).

Finally, no person situated as was Chaplinsky, is left in any forbidden sense to guess what a jury will guess. Neither he nor the jury is faced with uncertainty in any other sense than would be the case if the charge were negligent conduct, where the test is that of average conduct or gross negligence. Our statute deals "with the actual, not with an imaginary condition other than the facts." *International Harvester Company*, 234 U. S. 217, 223. And it deals with those facts upon the basis of tendencies of words used face-to-face in public places which are matters of common knowledge and appreciation.

*Exceptions overruled.*

All concurred.